

In re) Fair Hearing No. 15,373
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Appeal of)

The petitioner appeals a decision of the Department of Social Welfare reducing his Food Stamp grant based on his failure to apply for fuel assistance.

1. The petitioner is a fifty-six-year-old disabled man who receives assistance through the Food Stamp program and has received fuel assistance in the past. His sole source of income is an SSI payment of \$548 per month.

2. In June of 1997, everyone who received Food Stamps was mailed an informational "flier" by the Department of Social Welfare advising the recipient of the need to apply for fuel assistance in order to receive a higher level of Food Stamp benefits. The flier explained that everyone should apply, even those for whom heat was included in the rent because, if a recipient were found eligible for even \$10 in fuel assistance, he could get a larger fuel and utility deduction for calculating those benefits. Although the petitioner was receiving Food Stamps at that time, he does not recall receiving that flier.

3. The petitioner did not apply for fuel assistance by the August 31, deadline because he did not think he would

be eligible as he rents a room for which heat is included in the rental amount.

4. On November 4, 1997, the petitioner was mailed a notice advising him that his Food Stamps would be reduced on December 1, 1997 from \$93 to \$10. Their notice referred the petitioner to an enclosed sheet as explanation for that change. The enclosed sheet states as follows:

The reason for this change in your Food Stamp benefit is that you did not reapply for Seasonal Fuel Assistance for the 97/98 season.

Even though you live in a heated rental or you rent a room in someone's home, you may be eligible for a small Seasonal Fuel grant of \$10. If you are found eligible for the \$10.00 benefit, federal regulations allow the department to use a higher shelter deduction to compute your Food Stamp benefit level.

As you were told in a previous letter, you must apply for Fuel Assistance this year, to avoid a Food Stamp decrease. To get your Food Stamps back to their previous level, complete the enclosed application and return to the address below immediately! . . .

Included with that notice was an application for fuel assistance.

5. The petitioner agrees that he got the notice reducing the Food Stamps but does not recall getting the enclosed sheet which explained the reason and the actions he could take to avoid the reduction. Neither did he recall getting the fuel assistance application but he brought it with him and presented it at the hearing. Although he agrees that the notice he did remember receiving referred to the enclosed sheet for the explanation for the actions, he

also agrees he did not make any attempt to find out what that sheet might have said or to call his worker. This was because he knew he had a review coming up at the end of January of 1998, and he thought he would get everything straightened out then. He did not file an application for fuel assistance by the last date for late filing, November 30, or at any other time prior to the hearing on February 26, 1998.

6. In January of 1998, the petitioner received a packet with a new application for Food Stamps prior to the review. He filled out that application and returned it in person on January 30, 1998, but the worker was not in. After reviewing the application, she called him in the first week of February to discuss his eligibility. At that time they discussed his failure to apply for fuel assistance but the worker did not encourage him to file an application at that point because it was "too late".

7. Based on the above, it cannot be found that the Department failed to give the petitioner information explaining his benefits and the action required of him. He was mailed two notices which clearly explained to him what action he needed to take to prevent a reduction in his Food Stamps. Even if the petitioner had not received the original mailing in June of 1997, he did receive a mailing in early November of 1997, which was adequate to put him on notice that his benefits were being affected soon. And,

even if he did not receive the explanation sheet which the Department mailed with that notice (a highly unlikely event given that he got everything else in the packet including the application) the petitioner was made aware by that notice that there should have been another sheet enclosed. He made no effort to call to get a copy of that notice or to find out what was occurring or what steps he needed to take.

He did nothing for more than two months. It cannot be found on this evidence that the petitioner was misled or not informed by the Department as to his need to make this application in a timely manner. His failure to apply for fuel assistance is found to be a product of his inadvertence.

ORDER

The decision of the Department is affirmed.

REASONS

The regulations governing Food Stamps allow deductions from income for utility and fuel expenses in the form of standardized deductions. F.S.M. 273.9(d)(6). Persons who are required to pay only their non-heating utilities get a relatively low standard deduction. Persons who "incur heating and cooling costs separately and apart from their rent or mortgage" get the much larger heating utility deduction. F.S.M. 273.9(d)(6)(ii).

Although the petitioner does not incur heating and cooling costs separately from his rent, he can still be eligible under that category if he is a recipient "of energy assistance payments made under the Low Income Home Energy Assistance Act of 1981." F.S.M. 273.9(d)(ii)(B). It is for that reason that the Department encourages persons to apply for the home heating assistance program (which is the recipient in Vermont of LIHEAP funds). If a Food Stamp recipient is found eligible for that program, the Department can deduct the larger utility allowance when determining the amount of benefits.

It is not clear whether the petitioner would have been found eligible for benefits under the fuel assistance program. The only way that could have been determined was through the timely filing of an application. During this heating season, regular applications were accepted until August 31, and late applications were accepted until November 30. W.A.M. 2902.1 and 2. Through no fault of the Department, but apparently as the result of his own inadvertence, the petitioner missed both of those deadlines. Without a determination of fuel assistance eligibility, the Department is left with no choice but to use the lower utility allowance which has in turn resulted in a reduction of the petitioner's benefits.

As the Department's determination is in accordance with its regulation, the Board is bound to uphold its decision.

3 V.S.A. § 3091(d), Fair Hearing Rule No. 17. The petitioner should be aware that he will have a recurring opportunity to receive a higher utility allowance if he applies for and becomes a recipient of home heating fuel payments each year. He is encouraged to watch for notices and to file his application for assistance for the next heating season without delay.

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